

1 requested a continuance to file an objection to the PSR and to brief the issue. The sentencing
2 hearing was continued several times until March 8, 2012. Subsequently, Mr. Olvero also filed a
3 Motion to Withdraw Guilty Plea.

4 On March 8, 2012, this Court issued written orders denying Mr. Olvero's Motion to
5 Withdraw Guilty Plea and Objections to the PSR. The central issue in both the Motion to
6 Withdraw Guilty Plea and Objections to the PSR was the scoring under the guidelines of Mr.
7 Olvero's 1994 drug trafficking conviction. Mr. Olvero argued that he was sentenced to a total of
8 365 days in prison for this offense. According to Mr. Olvero, this conviction should only score 2
9 points and not merit the 16 level enhancement for a drug trafficking offense. The PSR and
10 Addendum to the PSR correctly stated that Mr. Olvero was sentenced to a total of 545 days in
11 prison for this offense. Accordingly, the offense scores three points and qualified for the 16 level
12 enhancement.

13 Mr. Olvero then requested two more continuances to brief the issue of the scoring of
14 the 1994 drug trafficking offense and the Court's orders. The sentencing hearing was set for April
15 9, 2012. On March 26, 2012, the Government filed a Motion to Dismiss the Information under
16 Federal Rules Criminal Procedure 48(a), with no reason other than "the interest of justice." On
17 March 28, 2012, this Court denied the Government's Motion stating that the Government had not
18 given any reason and that the defendant had already pled guilty. Also, on March 28, 2012 (the
19 same day), Mr. Olvero filed a Motion for Reconsideration of this Court's March 28, 2012 order.
20 Mr. Olvero argued that this Court is limited in its discretion to deny an unopposed Rule 48(a)
21 motion.

22 Under current Ninth Circuit law, the Court is limited in denying an unopposed Rule
23 48(a) motion. See United States v. Garcia-Valenzuela, 232 F.3d 1003 (9th Cir. 2000); United States
24 v. Gonzalez, 58 F.3d 459 (th Cir. 1995). The Ninth Circuit has stated that the district court may
25 deny an uncontested Rule 48(a) motion if it is "clearly contrary to manifest public interest."
26 Gonzalez, 58 F.3d at 461 (quoting United states v. Weber, 721 F.2d 266, 268 (9th Cir. 1984)). The
27 Ninth Circuit applies the "abuse of discretion" standard for review. Id.

28 In this case, the central issue is the scoring of Mr. Olvero's 1994 prior drug trafficking

1 conviction. There has been numerous continuances, arguments and briefing on the issue.
2 Ultimately, the Court made its decision and issued written orders denying Mr. Olvero's Motion to
3 Withdraw Guilty Plea and Objections. The Government then brought a Motion to Dismiss
4 Information without giving any reason. This Court finds that it is "clearly contrary to manifest
5 public interest" for the parties to circumvent adverse rulings by agreeing to dismiss the current
6 proceedings. Although the Government does have the power and discretion to prosecute,
7 dismissing proceedings after adverse rulings by the Court seriously undermines the authority of the
8 Court and is definitely against the interests of the public. Accordingly, this Court denied Mr.
9 Olvero's Motion for Reconsideration.

10 Mr. Olvero appealed. The parties filed a joint motion to vacate the conviction and remand
11 the case. The Ninth Circuit summarily granted the joint motion and order this Court to
12 immediately grant the Government's Motion to Dismiss the Information. Therefore, in accordance
13 with the Ninth Circuit Court of Appeals order filed September 5, 2012:

14 **IT IS ORDERED** that the mandate in this case be spread.

15 **IT IS FURTHER ORDERED** that Mr. Olvero's previously denied Motion to Withdraw
16 Guilty Plea is now **GRANTED**.

17 **IT IS FURTHER ORDERED** that the Government's previously denied Motion to Dismiss
18 Information is now **GRANTED**.

19 **IT IS SO ORDERED.**

20
21 *June 6th 2012*
22 date

23 *Gordon Thompson Jr.*
GORDON THOMPSON, JR.
United States District Judge

24 cc: All counsel and parties without counsel
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